

DATE: November 29, 1994 (adopted by BOS)

TO: Board of Supervisors

FROM: Richard D. Welton, Director  
Public Works & Development Services Department

SUBJECT: Proposed Amendment to Policy for Selection and Compensation  
of Architectural/Engineering Consultants to Provide for an  
Appeal Process

RECOMMENDED ACTION:

Adopt proposed amendment to Policy for Selection and Compensation of Architectural/Engineering Consultants to provide for an appeal process.

FISCAL IMPACT:

Since the proposed amendment deals only with selection policy, there is no fiscal impact to the County. Possible indirect fiscal impacts could be caused by delays due to an appeal, resulting in negative impact. Conversely, positive impact could result from acceptance of a lower cost proposal through an appeal process.

DISCUSSION:

On February 15, 1994, your Board directed staff to research options on the process for allowing proposers to appear before the consultant selection committee to ask questions regarding their non-selection. The Department has met with representatives of the architectural and engineering consultant community to jointly formulate the attached proposed amendment, Exhibit "A", to the existing Policy for Selection and Compensation of Architectural Engineering Consultants. The current policy was originally adopted by the Board of Supervisors on October 7, 1980, and most recently revised on April 25, 1989. Specifically, the professional

organizations consulted were the San Joaquin Valley Chapter of the Consulting Engineers and Land Surveyors of California, represented by Hugo Kevorkian and Lonnie Schardt, as well as the American Institute of Architects, represented by Bob Siegrist and Russ Taylor. The attached proposed amendment, Exhibit "A", represents a consensus from meetings with the architectural and engineering consultant community.

The amendment provides for an administrative appeal by a consultant who was not advanced by the consultant selection committee and the amendment sets a five-day time limit to file the appeal. Under the existing policy and process any consultant not advanced or selected by the selection committee may appeal directly to the Board. Your Board is the ultimate authority and can receive an appeal at any time.

The difficulty with the existing process is that other consultants involved in a Request for Proposals (RFP) process need notice of an appeal so they can represent themselves if the Board wishes to review a particular RFP procedure. Another difficulty occurs if an appeal occurs in mid-process. Consultant proposals are confidential until a final agreement is consummated with one firm. Proprietary information or innovative work plans by a consultant may influence the ranking of the consultant. If proposals are publicly opened in mid-process the RFP process is effectively stopped.

The consultant community was very concerned that any appeal process would add another function to an already lengthy process and that the appeal could jeopardize confidentiality of the proposal process.

The consultant organizations suggested that the existing policy was adequate, however an appeal time limit was necessary so if an appeal were made to the Board all other participants in the RFP process could appear. The consultants indicated that if an appeal process were introduced, it should be administrative and confidential to preserve the process. Given that a consultant can always appeal to the Board the policy amendment envisions setting up an administrative appeal to the Director of Public Works & Development Services Department and a representative of the County Administrative Office within a five-day period.

If a consultant is unsatisfied with the administrative review they can still appeal to the Board. However, the hearing then would be noticed to other RFP participants and confidentiality of written proposals would be maintained unless the Board

wished to end the RFP process at that time and make a final decision. Additionally, if a proposer appealed directly to the Board without pursuing an administrative review, the Board could direct the appeal to first be considered by the Director of Public Works & Development Services Department and appointed representative of the County Administrative Office.

The resultant proposed appeal procedure is intended to protect the integrity of the proposal process from the standpoint of both the consultants and the County. Involvement of your Board in the appeal process would be limited to only those cases where no satisfactory resolution can be reached by the County's representatives on final selection of a consultant.

OTHER REVIEWING AGENCIES:

This proposed amendment has been reviewed by representatives of the San Joaquin Valley Chapter of the Consulting Engineers and Land Surveyors of California and by the American Institute of Architects.

## EXHIBIT "A"

It is proposed to amend the Policy for Selection and Compensation of Architectural/Engineering Consultants by adding the following paragraphs to Section V(I) of said policy:

"When a written appeal is filed regarding the decision of the selection committee, the Director of Public Works & Development Services Department and a representative of the County Administrative Officer shall render a decision on the merits of the appeal within ten days.

All appeals shall be filed in writing with the Director of Public Works & Development Services Department within five (5) working days after notification of non-selection, or the proposer shall lose any right to further appeals.

All proposals shall be kept confidential throughout the appeals process and no proprietary information concerning project approach, concepts or preliminary analyses shall be revealed to competing firms.

In cases where a resolution satisfactory to the appellant is not possible, the appeal will be heard by the Board of Supervisors in regular session.

All proposers will be notified when an appeal is made. When an appeal is to be heard by the Board of Supervisors in regular session, the notification will include the time and place for the hearing and all affected firms as well as the Public Works & Development Services Department will be given an opportunity to comment. Affected professional societies will be allowed to file comments with the Board of Supervisors prior to such hearings."

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